

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

<hr/>)	
Benjamin Edelman)	
)	
v.)	Docket DOT-OST-2022-0046
)	
Emirates ¹)	
<hr/>)	

ANSWER OF EMIRATES

Communications with respect to this document should be addressed to:

Shahreyar Nawabi
Senior Vice President
Group Legal Department & Data Privacy Office

Cedric Newcombe
Associate General Counsel
Emirates Operations, SkyCargo
and International Regulatory Affairs

EMIRATES
P.O. Box 686, Dubai
United Arab Emirates

May 10, 2022

¹ Emirates respectfully requests that the Department take official notice of respondent's legal name.

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Benjamin Edelman)	
)	
v.)	Docket DOT-OST-2022-0046
)	
Emirates)	
)	

May 10, 2022

ANSWER OF EMIRATES

Pursuant to 14 C.F.R. § 302.405(a), Emirates submits this Answer to the Complaint filed by Mr. Benjamin Edelman (the “Complainant”) in the above-captioned docket. As more fully described herein, the Complainant seeks for his son a reserved seat for which the Complainant has not paid – and is apparently unwilling to pay – the applicable fare. Dissatisfied that Emirates will not yield to his unreasonable demand, the Complainant now seeks to leverage the Department’s third-party complaint system by portraying his disagreement with Emirates as one involving a violation of 49 U.S.C. § 41712.

Emirates has adhered to its international general rules tariff (“Tariff”) and published policies in its handling of this matter. There has been absolutely no violation of any Departmental statutes or consumer protection regulations by Emirates. The initiation of enforcement action is demonstrably not justified. The Complaint should be dismissed without further investigation.

I. INTRODUCTION

This case concerns an attempt to utilize the return portion of a roundtrip lap infant ticket for carriage of a child who is no longer a lap infant,

i.e., a child who now is older than two years of age. As the Complainant readily concedes, the child (his son) now must occupy his own seat when traveling by air. This was not the case when the lap infant ticket was issued nor when the Complainant's son flew on the outbound portion of his journey. Nor would it have been the case if travel occurred on the originally ticketed return date. Thus, Emirates collected the applicable lap infant fare when issuing the lap infant ticket.

Unfortunately, the return flight was not operated and, although the Complainant was offered a refund for the unused portion of the lap infant ticket, the Complainant desires to apply the unused portion of that ticket toward his son's future travel. However, by the time the Complainant sought to utilize the unused portion for alternate travel, his son was well past his second birthday. This being the case, the Complainant has repeatedly been advised by Emirates that he must purchase a seat – at the applicable child fare – for his son's carriage.

Despite the Complainant's attempts to portray Emirates as reneging on previously-made promises and (as will be discussed below) his tortured arguments and subjective interpretation as to the meaning of "extra fees" as referenced in Emirates' published policy, the circumstances at issue, *i.e.*, a child who ceases to be a lap infant before flying the return portion of a roundtrip itinerary, are not unforeseen to Emirates. To the contrary, the circumstances are directly addressed in Emirates' Tariff – a fact omitted from the Complaint's extensive quoting of the Tariff:²

RULE 0050. ACCEPTANCE OF CHILDREN

² Emirates' conditions of carriage expressly incorporate by reference its Tariff.

(B) ACCOMPANIED CHILDREN LESS THAN TWO (2)
YEARS OLD:

(1) FOR ONE CHILD **LESS THAN TWO (2) YEARS OLD**, ACCOMPANIED BY AN ADULT FARE-PAYING PASSENGER AT LEAST 18 YEARS OLD **AND NOT OCCUPYING A SEAT**, THE CHARGE WILL BE 10 PERCENT OF THE APPLICABLE FARE FOR SUCH TRANSPORTATION.

...

(3) THE AGE LIMITS REFERRED TO IN THIS RULE SHALL BE THOSE IN EFFECT ON THE DATE OF COMMENCEMENT OF TRAVEL. HOWEVER, **INFANTS WHO WILL REACH THEIR SECOND BIRTHDAY** DURING THE JOURNEY WILL, IN ACCORDANCE WITH SAFETY REGULATIONS, BE REQUIRED TO OCCUPY A SEAT, PAYING THE CHILD'S OR LOWEST APPLICABLE FARE . . . FOR THOSE SECTORS TO BE TRAVELLED AFTER REACHING TWO YEARS OF AGE.

Elsewhere, Emirates' Tariff provides as follows:

RULE 0002. STANDARD FORMAT OF ELECTRONIC RULES

CHILDREN'S DISCOUNTS - 89

...

(1) INFANTS' FARES:

AN INFANT LESS THAN TWO YEARS OF AGE ON THE DATE OF COMMENCEMENT OF TRAVEL FROM THE POINT OF ORIGIN WILL BE CHARGED THE AMOUNT SPECIFIED IN THE FARE RULE.

(A) A PASSENGER TRAVELING AT AN INFANT DISCOUNT FARE **IS NOT ENTITLED TO A SEAT** THAT IS RESERVED PRIOR TO DEPARTURE. IF A SEAT IS RESERVED PRIOR TO DEPARTURE, THE INFANT WILL BE ELIGIBLE ONLY FOR DISCOUNTS APPLICABLE TO INFANTS OCCUPYING A SEAT.

Read together, the foregoing Tariff rules clearly provide that lap infants are carried at the applicable lap infant fare when not occupying their own seat and are not entitled to a separately ticketed seat unless that seat is purchased in advance (at the applicable child fare, rather than the lap infant fare).

Emirates agrees with the Complainant that the Tariff address his situation “with remarkable and commendable clarity,”³ however, those provisions not only do not support that Complainant’s position – they directly contradict his principal argument that the *only* relevant factor “is the passenger’s age at the commencement of travel from the origin.”⁴

The Complainant’s related argument that Emirates’ has “promised” on its website an accommodation to which his son is not entitled, *i.e.*, a seat without payment of the applicable fare, is wholly without merit. Indeed, the policies explained on Emirates’ website establish – in no uncertain terms – that the Complainant is required to pay the applicable child fare (which he has not paid) in order for his son to be booked, ticketed and transported in a separate seat.

As will be detailed below, in an attempt to extract a reserved seat for his son without paying for that seat, the Complainant seizes on a representation made on Emirates’ website that certain passengers with travel plans affected by the COVID-19 pandemic may apply the value of their original ticket toward a future flight within the same geographic region and class of service “with no extra fees.” This, the Complainant maintains, means Emirates’ application of a child fare to a reserved seat to be occupied by only the child constitutes an unfair or deceptive practice within the meaning of Section 41712.

Taken to its logical end, the Complainant’s argument would have the Department conclude that any charge, regardless of its nature, assessed in

³ Complaint at 1.

⁴ *Id.*

the case of a passenger seeking to use the unused portion of a previously issued ticket in accordance with Emirates' stated policy – including charges for excess baggage or any other optional service – is categorically prohibited. Such an argument is not only absurd, but it requires the “no extra fees” language seized upon by the Complainant to be read to the wholesale *exclusion* of rules stated elsewhere on the website and throughout Emirates' Tariff clearly establishing that a child fare applies in the case of a reserved seat to be occupied solely by the child (in contrast to a lap infant), including under the exact circumstances here when the child has reached to age of two after commencing, but before completing, travel. The Complainant's subjective understanding of the “no extra fees” language is not that of a reasonable consumer.

At bottom, the handling of the Complainant's matter does not constitute an unfair or deceptive practice within the meaning of Section 41712 and 14 C.F.R. § 399.79. The Complainant has two options: he can either receive a refund of the unused portion of the lap infant ticket or he can apply the value of that ticket toward the applicable child fare for a reserved seat. The fact that the Complainant finds either option undesirable does not entitle him to a reserved seat for which he has not paid – much less enforcement action. The public interest does not warrant further investigation into this matter or any of the other Departmental actions sought in the Complaint.

II. ANSWER

Fully incorporating the foregoing, Emirates responds to the numbered

Paragraphs in the Complaint below. To the extent any statement or allegation in the Complaint is not specifically admitted or denied herein, it should be deemed denied by Emirates.⁵

1. This introductory paragraph of the Complaint states arguments and legal conclusions for which no further response is required.

2. Emirates admits the information in this paragraph.

3. Emirates admits the information in this paragraph.

4. Emirates admits the information in this paragraph but notes that Complainant's flights were cancelled due to mandatory international travel restrictions implemented in response to COVID-19.

5. Emirates lacks sufficient knowledge or information to admit or deny the information contained in this paragraph.

6. Emirates admits that for passengers whose travel was impacted by the COVID-19 pandemic, Emirates maintains a webpage titled "Your Ticket Options"⁶ and that language cited in this paragraph is present on this webpage; however, Complainant's excerpt combines language present in two different sections of the webpage: the "how to keep your ticket for the future" section and the "can I change my destination section," in a misleading attempt to emphasize certain statements and obscure other statements on that webpage that are not helpful to Complainant's arguments. Regardless, as explained below, the language quoted by Complainant in this paragraph has no bearing on the applicability of Emirates' Tariff and clearly articulated policy

⁵ See 14 C.F.R. § 302.408(b).

⁶ This webpage is available at <https://www.emirates.com/us/english/help/covid-19/ticket-options/>.

relating to the carriage of passengers who will turn age two prior to the conclusion of their journey.

7. Emirates admits that there is language on the “Your Ticket Options” webpage with the words “no extra fees.” However, Complainant cites this language out of context. Moreover, the language is irrelevant to Complainant’s case because Emirates does not seek to charge Complainant a fee for changing his travel date within the same geographic region and class of service. Rather, Complainant now wants an accommodation he did not purchase when initially booking the transportation at issue – a reserved seat to be occupied only by his son – and that accommodation requires payment of the applicable fare: a child fare instead of the lap infant fare previously paid.

8. Emirates admits that there is language on the “Your Ticket Options” webpage with the words “your ticket will be accepted,” but denies that the language constitutes a promise that the unused portion of a lap infant ticket entitles Complainant’s son to carriage in a separately reserved seat. The webpage language quoted in this paragraph is qualified by additional language that Complainant selectively omitted in the Complaint (*i.e.*, “Your ticket will be accepted for any flight to the same destination in the same booking class within the same cabin with no extra fees during this period”). Complainant’s assertion that “no additional payment is required” disregards the terms clearly articulated on the “Your Ticket Options” webpage as well as dispositive terms under Emirates’ policies and Tariff. A child fare now applies to Complainant’s son because his son has reached the age of two.

9. Emirates admits that its Tariff is available via the html address stated in this paragraph and that the Tariff governs travel by Complainant’s

son. Emirates denies Complainant's allegation that under the Tariff a lap infant fare applies to the entirety of a journey where the passenger turns two years old before completing that journey. Emirates admits that its Tariff contains, at Rule 89, the language cited by Complainant; however, Complainant cites to only a portion of the Tariff language applicable to his son's travel. Whether intentionally or unintentionally, Complainant does not quote Rule 50 – referenced in Complainant's excerpt of Rule 89 – which directly addresses the scenario at issue, stating in relevant part:

FOR ONE CHILD LESS THAN TWO (2) YEARS OLD,
ACCOMPANIED BY AN ADULT FARE-PAYING PASSENGER AT
LEAST 18 YEARS OLD AND NOT OCCUPYING A SEAT, THE
CHARGE WILL BE 10 PERCENT OF THE APPLICABLE FARE FOR
SUCH TRANSPORTATION

. . .

THE AGE LIMITS REFERRED TO IN THIS RULE SHALL BE THOSE
IN EFFECT ON THE DATE OF COMMENCEMENT OF TRAVEL.
HOWEVER, INFANTS WHO WILL REACH THEIR SECOND
BIRTHDAY DURING THE JOURNEY WILL, IN ACCORDANCE WITH
SAFETY REGULATIONS, BE REQUIRED TO OCCUPY A SEAT,
PAYING THE CHILD'S OR LOWEST APPLICABLE FARE . . . FOR
THOSE SECTORS TO BE TRAVELLED AFTER REACHING TWO
YEARS OF AGE.

Additionally, Emirates' website⁷ clearly explains that the fare differential between an infant ticket and a child ticket must be paid in the event that a passenger turns two years of age during their ticketed journey, noting:

Any person 2 years or older must occupy a seat when traveling on Emirates. Therefore, any infant who reaches the age of 2 after the commencement of the journey must pay the applicable child fare and is required to occupy a seat for that part of the journey. Where a passenger travels as an infant on the outward journey and as a child on the onward/return journey, applicable infant fare will apply for the outward

⁷ See Emirates.com, "Special assistance and requests," "what are the ticketing rules for child and infant passengers on Emirates," "IMPORTANT: new information concerning infant bookings," *available at* <https://www.emirates.com/us/english/help/faq-topics/special-assistance-and-requests/faq/what-are-the-ticketing-rules-for-child-and-infant-passengers-on-emirates/>. Although this policy is described as "new information," this language has been on Emirates' website since Complainant purchased the tickets at issue.

journey and child fare for the onward/return flights... Should travel plans change while en route and an infant turn 2 years old after travel has commenced, the unused coupon(s) will be reissued at the applicable child fare for the rest of the trip and a seat will be booked for all remaining flights.

This language makes clear that Complainant's son must occupy a seat, for which the associated child fare must be paid, because Complainant's son is now over the age of two.

10. Emirates admits that on March 1, 2022, Complainant called Emirates reservations to request new travel dates and that Complainant and Emirates discussed that a child fare would now apply because his son had reached his second birthday, in accordance with Emirates' clearly disclosed policies and Tariff. Emirates denies that a child fare constitutes an "extra fee."

11. Emirates admits that on March 2, 2022, Complainant submitted to Emirates' customer relations department the message excerpted in this paragraph.

12. Emirates admits that on March 9, 2022, Emirates replied to Complainant's March 2, 2022 email and included in that reply the language excerpted by Complainant in this paragraph.

13. Emirates admits the information in this paragraph, except that Emirates denies that it has "insisted on an additional fee" in contravention of its policies or Tariff. Emirates has advised Complainant that, in order for his son to travel in his own reserved seat, the fare applicable to that travel is the child fare, in accordance with Emirates' policies and Tariff. Emirates admits that on March 15, 2022, it provided to Complainant the response excerpted in this paragraph.

14. Emirates admits that it received a draft of the Complaint from Complainant and that on April 21, 2022, it replied to Complainant as excerpted in this paragraph.

15. This paragraph either (a) states arguments and legal conclusions for which no further response is required, or (b) alleges Complainant's intentions, expectations or desires, for which Emirates lacks sufficient knowledge or information to admit or deny the allegations therein. Emirates notes that the policies of other airlines are irrelevant to Emirates' policies and the language contained in Emirates' Tariff, which govern travel by Complainant's son.

16. Emirates denies that Rule 89 is the only section of its Tariff "relevant to a passenger who turns two during a journey," an allegation clearly refuted in this Answer. The remainder of this paragraph either (a) states arguments and legal conclusions for which no further response is required, or (b) alleges Complainant's intentions, expectations or desires, for which Emirates lacks sufficient knowledge or information to admit or deny the allegations therein.

17. Emirates denies the information in this paragraph. The language describing Emirates' policies with respect to the transport of infants and children over the age of two on its website is clear and is fully consistent with the terms of its Tariff. Emirates has not sought to charge Complainant a fee of any kind for the carriage of a lap infant; it seeks only to collect the fare applicable to a child occupying a reserved seat, as provided in Emirates' Tariff and policies.

18. Emirates denies the information in this paragraph. Complainant misreads the “Your Ticket Options” page and disregards Emirates’ policies articulated on its website that are not specific to COVID-19, such as policies relating to the transport of children over the age of two, as well as Emirates’ Tariff, yet also acknowledges that Emirates’ Tariff applies to his son’s travel, having cited to the Tariff repeatedly throughout his Complaint. The fact that Emirates maintains a webpage that allows for flexibility to use the value of a ticket for travel affected by COVID-19 in no way negates or supersedes Emirates’ other applicable, clearly-articulated policies and rules.⁸

19. The information in this paragraph states arguments and legal conclusions for which no further response is required. Emirates will allow Complainant to apply the unused portion of his son’s lap infant ticket towards a child fare ticket “for any flight to same destination.” Emirates’ policies and Tariff provide, in no uncertain terms, that a child fare must be paid for carriage of Complainant’s son in a seat now that he is over age two.

20. Emirates denies the information in this paragraph. Rule 89 – repeatedly cited by Complainant – references Rule 50. Rule 50 states that a child fare applies to the carriage of a child such as Complainant’s son who now is over the age of two.

21. Emirates admits that a refund of the unused portion of the lap infant fare, if requested by Complainant, would be processed on a half-

⁸ In footnote 5 of the Complaint, Complainant again severely mischaracterizes the text of the “Your Ticket Options” webpage, claiming that the policy stated therein constitutes a promise to not collect a fare difference for a passenger who reaches the age of two after commencing, but before completing, a journey and requires a reserved seat *for which no fare was ever paid*. Further, the “Your Ticket Options” webpage specifically notes that that changes to travel dates may be subject to fare differentials. In any event, Emirates’ policies and Tariff, as noted throughout this Answer, make clear that a child fare must be purchased for children over the age of two, including under the same circumstances as those of the Complainant and his son, where a child turns over the age of two during the course of a journey.

roundtrip basis. As stated elsewhere in this Answer, Complainant's argument that he is entitled to a seat for which he has not paid is wholly without merit, his selective quoting of the "Your Ticket Options" webpage notwithstanding. To the extent the remainder of this paragraph alleges Complainant's intentions, expectations or desires, Emirates lacks sufficient knowledge or information to admit or deny such allegations.

22. Emirates admits that its April 21, 2022, written reply to Complainant reproduced at Exhibit 1 to the Complaint does not specifically address Rule 89 from Emirates' Tariff. Emirates notes that other provisions in its Tariff (principally Rules 2(89) and 50) specifically address Complainant's situation, not Rule 89 standing alone as he maintains throughout the Complaint.

23. Emirates admits that it has not advised Complainant of specific child fare applicable to the carriage, in a reserved seat, of his son because Complainant has not advised Emirates of the desired flight itinerary (to include travel dates and times). Emirates notes that fares vary based on these and other criteria and thus it cannot provide an appropriate fare quotation unless and until Complainant provides it with the relevant travel details.

24. Emirates lacks sufficient knowledge or information to either admit or deny the information in this paragraph. Emirates is happy to quote the applicable child fare to Complainant if he provides Emirates with his son's travel details.

25. Emirates denies that it has promised to Complainant travel for his son in the son's own (reserved) seat at a lap infant fare. To the extent the remainder of this paragraph alleges Complainant's intentions, expectations or

desires, Emirates lacks sufficient knowledge or information to admit or deny such allegations.

26. Emirates admits that Complainant booked tickets that are subject to Emirates' Tariff. The remainder of the information in this paragraph either (a) states arguments and legal conclusions for which no further response is required, or (b) alleges Complainant's intentions, expectations or desires, for which Emirates lacks sufficient knowledge or information to admit or deny the allegations therein. Emirates denies that the policy of British Airways – or any other carrier – bears any relevance to the Complaint. As noted elsewhere in this Answer, Complainant is not entitled to a ticketed seat for which he has not paid, and Complainant's matter has been appropriately handled by Emirates in accordance with its Tariff.

27. Emirates denies that it has failed to honor its written commitments to Complainant in connection with this matter. The remainder of this paragraph alleges Complainant's intentions, expectations or desires, for which Emirates lacks sufficient knowledge or information to admit or deny the allegations therein.

28. To the extent this paragraph alleges Complainant's intentions, expectations or desires, Emirates lacks sufficient knowledge or information to admit or deny such allegations. Emirates notes that it has not received any U.S. complaints regarding the applicability of a child fare to passengers ticketed as lap infants and who reach the age of two prior to their return journey.

29. Sub-paragraphs 29(1) through (6) of the Complaint ask the Department to make certain findings, assess penalties against Emirates and

take certain other actions. For the reasons set forth herein, Complainant is not entitled to relief of any kind and the Complaint should be dismissed.

III. AFFIRMATIVE DEFENSE

Complainant fails to state a claim upon which relief may be granted.

IV. CONCLUSION

WHEREFORE, based on the foregoing, Emirates respectfully submits that the Department should promptly dismiss the Complaint in its entirety in accordance with 14 C.F.R. § 302.406(a)(2).

Respectfully submitted,



Shahreyar Nawabi
Senior Vice President
Group Legal Department & Data
Privacy Office

Cedric Newcombe
Associate General Counsel
Emirates Operations, SkyCargo
and International Regulatory Affairs

EMIRATES
P.O. Box 686, Dubai
United Arab Emirates

May 10, 2022

VERIFICATION

Pursuant to Title 18 United States Code Section 1001, I Cedric Newcombe, in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.



Cedric Newcombe
Associate General Counsel
Emirates Operations, SkyCargo
and International Regulatory Affairs
Emirates

Date: May 10, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of May, 2022, I caused a copy of the foregoing Answer to be served via electronic mail on the individuals listed below:

Mr. Benjamin Edelman	ben@benedelman.org
Ms. Blane Workie	blane.workie@dot.gov
Ms. Kimberly Graber	kimberly.graber@dot.gov
Mr. Robert Gorman	robert.gorman@dot.gov



Rachel Welford